

**Fair Political Practices Commission  
Memorandum**

**To:** Chairman Randolph, Commissioners Blair, Downey, Huguenin, and Remy

**From:** John W. Wallace, Assistant General Counsel  
Luisa Menchaca, General Counsel

**Subject:** September 2005 Work Plan Revisions

**Date:** August 10, 2005

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**I. INTRODUCTION**

Each year the Commission approves a regulatory work plan for the next calendar year.<sup>1</sup> The plan provides for quarterly work plan revisions. Attached is the September update to the regulatory work plan for calendar year 2005.

**II. PROPOSED REVISIONS**

**A. CAMPAIGN PROJECTS**

**Item 1. McCain-Feingold:** Under the McCain-Feingold Act, federal law requires that 100% of the costs of a campaign mailing be paid from federal funds if the mailing supports or opposes a federal candidate. Costs of paraphernalia (such as bumper stickers, pins, and door hangings) are allocated on a 36%/64% ratio - where 64% is the maximum that can be paid from state funds. The Commission will consider a regulation to simplify compliance with both the Act's reporting requirements and federal law.

***CHANGE:** The interested persons' meeting occurred in February. Pre-notice discussion was held in May. Rather than scheduling adoption in June, the Commission has determined that seeking advice from the Federal Elections Commission (FEC) would be desirable before adoption. The discussion of the letter has been moved from July to November.*

**Item 5. Affiliated Entities (18428):** This regulation discusses reporting by affiliated entities." It may be further amended to clarify the application of the aggregation provisions to local candidates and committees, and/or add a definition "affiliated entities" possibly codify advice in the area.

***CHANGE:** This item has been delayed until November. The interested persons meeting occurred in May, but due to an especially heavy October agenda, staff is proposing pre-notice discussion in November, adoption early in 2006.*

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<sup>1</sup> See staff memorandum dated December 1, 2004, *Approval of 2005 Regulatory Priorities*.

**Item 6. Hard And Soft Money Bank Accounts:** § 85303(a) and (b) set calendar year limits on contributions to recipient committees and party committees for the purpose of making contributions to candidates for elective state office. Section 85303(c) provides that there are no limits on contributions to these committees that are used for purposes other than making contributions to candidates for elective state office. Staff proposes requiring these committees to: (1) establish a noncandidate support (NCS) account; (2) deposit NCS contributions into the NCS account; (3) prohibit the making of contributions from the NCS account; (4) require committees to notify other committees to which NCS funds are transferred that the funds may only be used for NCS purposes.

***CHANGE:** The interested persons' meeting occurred in August, rather than July. However, due to a heavy agenda in October, pre-notice discussion (or consideration of an issue memorandum) will be delayed to November. The adoption hearing, if any, will occur early in 2006.*

## **B. CONFLICT-OF-INTEREST DISQUALIFICATION AND DISCLOSURE**

**Item 2. Aggregation under Section 84308:** Under certain circumstances, section 84308 disqualifies certain appointed "officers" of a public agency, who is running or has run for elective office, from participating in decisions affecting his or her campaign contributors. The statute provides that when a closed corporation is a party (or participant), the majority shareholder of the corporation is also a party (or participant). This project considers whether further clarification of this aggregation rule is necessary.

***CHANGE:** This item has been delayed until November. The interested persons meeting occurred in May, but due to an especially heavy October agenda, staff is proposing pre-notice discussion in November, adoption early in 2006.*

**Item 4. Permanent Ban on Post-Employment Activities: Regulations 18741.1; 18746.1:** This project involves proposed amendments to regulation 18741.1, relating to the "permanent ban" on post-employment activities. Under the Political Reform Act, former officials in state government are prohibited from attempting to influence proceedings in which they participated when under governmental employment. (§§ 87401 and 87402.) A former official has "participated" where he or she has had "personal and substantial" involvement in the proceeding. In 1999, the Commission adopted regulation 18741.1 interpreting §§ 87401 and 87402. That regulation provides that a supervisor is deemed to have participated in any proceeding which was "pending before" the official's agency and which was under his or her supervisory authority. In the *Lucas* Opinion (*In re Lucas* (2000) 14 FPPC Ops. 15) the Commission interpreted this regulation in the context of a high-level official of the Board of Equalization. In so doing, the Commission concluded that even though the official technically had "supervisory authority" over all employees under his chain of command, the official was not a "supervisor" of those employees within the meaning of the regulation, and therefore, did not participate in audits conducted by the

lower-level employees. The Commission distinguished this interpretation from the 1990 Commission interpretation reflected in the *Brown* Advice Letter, No. A-91-033, which applied the ban to the former chief of the Enforcement Division of the Commission. The Commission instructed staff to amend regulation 18741.1 to reflect this distinction.

**CHANGE:** *Pre-notice discussion was held in May. Adoption has been rescheduled from July to September.*

**Item 6. Joint Powers Insurance Agency and Multiagency Filers. Section 87350:** In 1990, a new type of statutory filer was added to the Act. Assembly Bill 2297 added two new provisions. New section 87350 provides that a person who is required to file more than one statement of economic interests due to his or her status as a designated employee for more than one joint powers insurance agency, may elect, by providing notice to the Commission, to file only a single multiagency statement disclosing all investments in entities doing business in the state, all interests in real property located within the state, and all income received during the applicable time period, in lieu of filing the disclosure statements for each agency. These multiagency filers file the original statement with the Commission, and file a separate statement with each insurance agency stating that the statement is on file with the Commission and available upon request. Proposed regulation 18735.5 describes with greater specificity the requirements of section 87350 and section 87500(m).

**CHANGE:** *Pre-notice discussion was held in May. Adoption has been rescheduled from July to September.*

**Item 7. Regulation. 18750.1: Procedure And Standards For Requesting Exemption From Requirement To Adopt A Conflict Of Interest Code:** Regulation 18751 sets forth the procedural requisites and substantive bases whereby the Commission may grant an exemption from the requirement that agencies for which the Commission is the code reviewing body (state agencies and local government agencies with jurisdiction in more than one county) adopt a conflict of interest code. Regulation 18751(d)(3) requires that the annual operating budget (exclusive of salaries) for an agency to fall into the exception is less than \$70,000. Should the Commission consider a regulatory change to the \$70,000 threshold?

**CHANGE:** *In researching the scope of this project, staff believes that the scope should be expanded to a more comprehensive review and revision of the conflict of interest code exemption regulation. Consequently, discussion has been delayed from September to October. Staff is anticipating the October hearing will be a pre-notice hearing only. The adoption hearing will occur in December.*

**Item 9. Proposition 71 (Stem Cell Research):** As part of staff's review of SB 18 and ACR 1, staff noted that two sections of the new law expressly refer to the PRA. These include Health & Safety Code sections 125290.30(g) and 125290.50. Staff believes it is

necessary to investigate whether Proposition 71 amended the Act indirectly, and if so, what the Commission's role is in advising on and enforcing these provisions.

***CHANGE:** Due to workload adjustments, it is anticipated that a memorandum presenting the issues raised under this project will be presented at the October Commission Meeting.*

### **C. ADMINISTRATIVE, ENFORCEMENT, AND OTHER ISSUES**

**Item 1. Confidentiality of Enforcement Cases.** Historically, it has been the policy of the Commission to keep confidential both the existence of and any information discovered in connection with an enforcement investigation until after the investigation has been concluded. Enforcement staff proposes the addition of a regulation, interpreting § 83115 that expressly provides for the confidentiality of investigations, describing the scope of that confidentiality, and any exceptions the Commission may wish to build into it. This regulation could take the form of an amendment to existing reg. 18362, governing "Access to Complaint Files."

***CHANGE:** After researching the history of the Commission's Public Record Act process, it was decided to further research nonregulatory approaches to this issue (such as operation policies or statutory amendments). Therefore the item is being removed from the regulatory calendar.*

**Item 2. Precedential Decisions In Enforcement Actions.** Section 11425.60 of the APA provides general authority to the Commission to designate decisions as precedential. Enforcement is proposing the Commission consider a regulation establishing a precedential decision system and setting forth various criteria for the Commission to consider in determining whether to designate a decision as precedential.

***CHANGE:** The interested persons' meeting occurred in August, rather than July. Consequently, the pre-notice discussion will be delayed from September to October. Adoption will be delayed from November to December.*

**Item 3. Section 87302 -- Terminated Agencies:** A regulation is necessary designating a filing officer for statements of economic interests filed by employees of state agencies that go out of business (e.g., DOIT, OCJP).

***CHANGE:** In order to balance out the regulation workload during the final three months of 2005, this item has been advanced one month and will be considered for adoption in September, rather than October.*

### **III. 1090 UPDATE**

On June 2, 2005, the decision was made, in cooperation with the author's office, to take Assembly Bill 1558 up next year rather than risk a failed vote this session.

“As the Friday deadline for passage approached the decision was made with the author's office to take this bill up next year rather than risk a failed vote at this time. This was due to a number of factors. First, the analysis of the Assembly Republican Caucus, in a report that contained some errors, took an oppose position on the bill. That position was based in part on the opposition of the Los Angeles District Attorney and the California District Attorneys Association. Because the bill needs a minimum of six Republican votes, it was decided that we would work to remove opposition, and meet with members before taking the bill up for a floor vote in January.” (June 1, 2005, Legislative Report, by Theis Finley, Executive Fellow, Mark Krausse, Executive Director.)

Consequently, it was decided that the Commission would work to remove opposition before taking the bill up for a floor vote in January. The most current version of the proposed legislation redrafted in light of input from interested parties can be accessed on our web site at: [www.fppc.ca.gov](http://www.fppc.ca.gov)

#### **Appendix 1: Regulation Calendar**